

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

AARON A. COLE,	:	
	:	Case No. 2:14-CV-562
Plaintiff,	:	
	:	JUDGE ALGENON L. MARBLEY
v.	:	
	:	Magistrate Judge Kemp
MICHELLE MILLER, et al.,	:	
	:	
Defendant.	:	

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation. (Doc. 25). The Magistrate Judge recommends that Plaintiff Aaron Cole's complaint be dismissed without prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b). Plaintiff, who is proceeding pro se, was a prisoner at the time he filed his complaint but has since been released. His complaint made claims of discrimination, invasion of privacy, denial of due process, retaliation, conspiracy, and intentional infliction of emotional distress. (Doc. 1 at 7, 9-15). Upon independent review, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation and **DISMISSES** this case for failure to prosecute.

On March 23, 2015, Defendants filed a motion to dismiss for failure to state a claim upon which relief could be granted. (Doc 22). Plaintiff did not respond to the motion, and on May 14, 2015, the Magistrate Judge issued an order to Plaintiff to file an opposing memorandum to Defendants' motion within fourteen days of the date of the order, warning that failure to do so would result in the motion being treated as unopposed or the dismissal of the action for failure to prosecute. (Doc. 23). The order was mailed to Plaintiff at the address he had filed with the Court upon his release from the Mansfield Correctional Institution on January 22, 2015. (Doc

17). It was returned as undeliverable on June 11, 2015. (Doc. 24). The order was subsequently mailed to Plaintiff's former address at the Mansfield Correctional Institution. The Magistrate Judge then issued a Report and Recommendation recommending that this case be dismissed for failure to prosecute. In his Report and Recommendation, the Magistrate Judge noted that the notice had been re-mailed to Plaintiff and had not been returned as undeliverable. The notice was subsequently returned as undeliverable on June 26, 2015. (Doc. 26).

On November 3, 2015, the Court issued an order directing the clerk to re-send the Magistrate's May 14, 2015 order to file an opposing memorandum within fourteen days to Plaintiff at his new address at the Lorain Correctional Institution. (Doc. 28). The deadline to respond has passed and Plaintiff has not filed a response.

The requirement to give notice before dismissing an action for failure to prosecute may be met by affording Plaintiff a reasonable period of time to comply with orders before dismissal. *Sepia Enter., Inc. v. City of Toledo*, 462 F.2d 1315, 1318 (6th Cir. 1972) (per curiam). The Court has sent notice to Plaintiff at his last three known addresses, and Plaintiff has not notified the Court of any other address where he can be found. Therefore, the Court will dismiss this case without prejudice.

The Court hereby **ADOPTS** the Magistrate Judge's Report and Recommendation. This case is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

IT IS SO ORDERED.

s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: December 1, 2015